

---

REMARKS  
UPON THE  
USURY LAWS:  
IN REPLY TO THE HON. JOHN WHIPPLE  
BY  
*A NEW-YORK MERCHANT,*

---

JUNE, 1850.

---

E. B. CLAYTON & SONS, Printers and Stationers, 161 Pearl-street.

332.8

R281

## THE USURY LAWS.

---

It has for a long time caused much surprise, that the great state of New-York should, up to this enlightened period of 1850, quietly witness the unwise interference of our state government in the regulation of our private contracts with each other for the use of money. The commercial city of New-York, which is now, and is destined to continue to be, the *London* of the entire American continent, from Baffin's Bay to Cape Horn, has to contend with the most stringent usury law that exists in the entire commercial world.

The law in question is regarded with so great a degree of *disrespect*, that in the ordinary times of a calm in the financial world, our merchants for the time being, lose sight of the unseemly stain it attaches to our reputation for fair business intelligence. They indolently procrastinate the waging war upon it, under the natural expectation that the "*next legislature*" will modify or wipe it away from our statute book. It has been supposed that in what to trading men seemed so plain a case, it was only needful to send to our own delegation in the legislature, a mere memorandum that the repeal of that law might as well be attended to before a recurrence of some revulsion in business should invest it with its usual powers of evil.

During the recent session of our legislature, our merchants and general traders, leading mechanics, &c., were reminded of the fact that a feeling prevailed, or was *said* to prevail, in the interior portions of our state, in favor of our restrictive Usury Law. It was, therefore, deemed essential to send a memorial to the legislature praying for a modification.

A public meeting was accordingly called at the Merchants' Exchange. This meeting was organized by the appointment of a President, Vice President and Secretaries from amongst our most staid and every way respectable citizens. Certain resolutions were passed, and a petition to our legislature was prepared, and most numerously signed by parties so actively engaged in business as to *borrow* more money than they lend.

The memorial thus prepared, was presented to the Assembly and Senate. The Assembly soon made a report, strongly recommending a modification of our law, and presented for consideration, a bill to that effect. The Senate also reported a similar bill.

To the great surprize of our business men, an organized opposition to *any* change was immediately got up by some parties. They procured a letter that had been written against high interest by Mr. Wicke, a member of Congress from Indiana. This letter was not at all specific, it presented no tangible argument. The writer said his want of *time* prevented his portraying all the desolations caused by the absence of restrictive Usury Laws, so he contented himself for the present, with saying the results were "frightful," many were "desolated," "ruined," "discouraged," "ashamed," "indignant," became "dissipated" and "man-hating," and some "died in secret;" and, to cap the climax, he added that these moral desolations and evils would continue to develop themselves in a geometrical ratio, and "blighting curses would follow the advocates of the repeal of any Usury Law."

But then, like most dark pictures, there were *some* bright spots on this one, for "the clerks in stores, retailers, &c., in many instances *became wealthy* almost without capital."

It hardly seems needful to array anything like sober argument against the extravagant, but harmless hyperbole of Mr. Wick. He has no doubt witnessed many very

great and rapid changes in property in Indiana from 1835 to 1841, but he greatly errs if he ascribes such revulsions and revolutions in financial matters, either to the absence or presence of usury laws. I charge upon the restrictive usury laws a deal of miserably nonsensical mischief, but I have no idea they will ever burn up foaming cataracts, or essentially disturb the harmony of the solar system. They next produced a few lines from Mr. Walker, of Wisconsin, stating that money had been loaned in Wisconsin at 25 p. c. per annum ; and that is all that Mr. Walker said.

These two letters, though "far fetched," were not, I suppose, deemed sufficiently potent, so they sent to *Rhode Island* and procured a racy and pungent sort of pamphlet on the "*Importance of Usury Laws*," written fourteen years ago, by the Hon. John Whipple, of Providence. Of this they procured a new edition, omitting however to "revise and correct" it, but prefaced it with the two letters aforesaid, together with some complimentary remarks as to Mr. Whipple's powers to master any subject which he undertook to master.

This pamphlet was scattered about on every desk in the Senate and Assembly. And, whether it was or was not read, there lay the pamphlet on the desks, and it contained some thirty pages of argument, or purporting to be argument ; written, too, by a gentleman of high respectability, rendering the inference quite natural that there must be *some* cogency of reasoning in it, enough probably to render it unsafe to act in haste upon an important measure, just at the close of the session. And so the session came to a close without anything being done about usury, farther than to pass an act restricting incorporated companies from entering a plea of usury.

Now, it is this pamphlet of Mr. Whipple that I purpose to examine and comment upon. Pursuant thereto

I will present an outline of his argument, taken almost verbatim from his book. It is this :—

*Mr. Whipple.*

“ Money is not originally the product of individual labor and skill, but is brought into existence by the government. A man’s ownership to his money is not absolute, but is qualified and limited by the special purpose for which it was designed, namely, to be used as *currency*. The currency was created by government at the expense of the whole, and for the good of the whole. The metallic currency must pass through the mint, and receive, in some way, the sanction of government, before the character of money is impressed upon it.

Thus money is unlike any other article, so much so that the possessor has neither the legal nor the moral right to take for it all he can get.”

*Answer.*

Money is *not* created by government, but stands in the same relation to its owner that other property does. A man owns certain ingots of silver, resulting from his own capital and labor, and determines of his own free will, to take them to the U. S. Mint to be coined into dollars. He meets the requirements of the law as to coining, so that, on leaving the Mint, all government control ceases, farther than the general control incident to *all* property.

It follows, as a matter of course, that a man possessing himself of coin in the way here stated, has the *right* to remelt his own coin immediately into household utensils or ornaments, and hire out such ornaments, &c., and get all he can for the use of them. Who can deny this? And, if he has such right, then he *ought* to have the right to hire out the money from which such articles are made, for as great a compensation as a sane man may be willing to pay him. His sugar is weighed according to law, still

we don't hear of government attempting to limit the price of sugar.

The farmer who raises his hundred bushels of wheat, may sell it for one hundred dollars. Surely those *dollars* are directly referable to the farmer's own capital and labor, and therefore he can use them to suit himself.

*Mr. Whipple.*

“ Our paper money is the creature of the state governments, who authorize certain agents of theirs called ‘*Banks*’ to issue certain amounts. Thus the *origin* of the metallic and paper currency is with the government of the country.”

*Answer.*

Banks are not the agents of the state governments any more than incorporated cotton mills are. A bank is an association of persons for the custody and loaning and issuing of money. To that end they obtain a charter from a state government. The capital is divided into transferable shares, so that a party may put in a small or a large amount, without endangering the entire residue of his property.

Thus organized, they issue bills redeemable on demand with coin, and in that way facilitate the movements of currency in a very convenient and useful manner. But to say that government *creates* the money or currency with which such banks deal, is as absurd as it would be to say government *creates* the shirtings woven at an incorporated cotton mill.

*Mr. Whipple.*

“ Government possesses the power of converting lead, or silk, or rags into currency. Money possesses no inherent value of itself, further than as the test of value of other articles. The power of money over every other article, arises out of the artificial character given to it by the state,

and not out of the quality of the material of which it is composed.”

*Answer.*

Government cannot impart any increased value to metals, unless they add to them some actual useful labor. If such labor is paid for, the account is balanced at once, and all right to farther control ceases. Nor can government impart any value to paper or “silk and rags,” without some tangible appropriation to back it up. The futility of such attempt was shown, when the French government once issued assignats.

The poor Frenchmen, with thousands of *such* money in their pockets, could not buy a single loaf of bread with it. When coin is used in a sale or purchase, its intrinsic value alone is considered. When we sell an article for a dollar, the *stamp* is a convenient evidence of a *fact* that actually *existed* before the *stamp* was used. The quantity of silver which we know it contains is what governs our estimate of the money; otherwise government might as well make up a lot of dollars from *pewter*. Does the *stamp* make the silver? The debasing of coin has often been tried by some of the most powerful and influential governments, without the attainment of any end farther than the defrauding of the public creditor. Such debasing of coin was always followed by a proportionate rise in the price of commodities.

*Mr. Whipple.*

“Currency or money is a license provided by government to enable or qualify all men to transact their business. The government has a specific right in the currency, a joint interest in the thing itself, and an undoubted right to restrain the individual from using it except for partnership purposes. The older right is in the public, and the individual purchased merely the power of using it, subject to the elder right.”



*Answer.*

Money being the product of the constituency of a government, it can hardly be looked upon as a *license* from such government.

A license is authority to act in a particular character, as for instance to license a physician or a lawyer, the party having previously passed through some preparatory ordeal. To *license* a universal inalienable *right*, would surely be a most preposterous anomaly in any free, republican government.

*Mr. Whipple.*

“It is not for the interest of the public to allow money to be converted into merchandise and bought and sold at any price the parties may choose. In borrowing and lending, the parties do not in general, meet on equal terms, and, in the absence of Usury Laws, bargains in money are not as fair as bargains usually are in relation to merchandise.”

*Answer.*

The *falsity* of the above would no doubt be very soon shown, should our Usury Laws be repealed, or essentially modified. It is one of those questions in which, from the nature of the case, a *trial* is needed for a conclusive demonstration. There is not, however, a single practical business man in the United States who would not, most positively, deny Mr. W.’s position on that point.

*Mr. Whipple.*

“Money has unlimited power, the borrower is a slave to the lender: nine times out of ten, he *must* have the money at all events.”

*Answer.*

If money is so very powerful, it would seem all the more unreasonable to limit by law, our compensation for loaning it. Let the natural competition among money lenders regulate the price. As for the slavery of a money

borrower, just remove the Usury Laws, and the parties would stand on the same footing of reciprocal freedom as with other articles of merchandise. When a man is *trying* to borrow, he may sometimes feel more or less servile, but if he succeeds in borrowing, he becomes decidedly more independent.

*Mr. Whipple.*

“It requires no more money to perform the business of society at one price than at another. If there is enough money at high rates, there is enough at low rates; a scarcity is wholly artificial.”

*Answer.*

According to this, if there is enough flour in the country, at the present price of \$6 per barrel, there would be enough at \$3 per barrel; but it would soon be found that at \$3, the flour would be exported or in some way sent off so rapidly that it would immediately become very scarce here. The same may be said of money. If men were *compelled* to loan it at less than the market rates, a good deal of it would soon go to other places, or states. A high rate of interest in any country, always has the tendency to bring the precious metals, or some kind of money there. When the rate of interest advances essentially in England, they soon begin to import bullion. The free import of bullion very soon lowers the rate of interest again.

Having answered as briefly as I can, all the specific points presented by Mr. W., I will add some general remarks.

We all concur in the usefulness of fixing some rate of interest to govern our financial transactions in the absence of a stipulated rate between the contracting parties, or in running accounts, &c.; and in the spirit of compromise, I would even go farther, and include banks and real estate mortgages in the restriction, giving the free trade principle only to bills of exchange, and promisory notes or contracts, not having more than twelve months to run.

I have never yet heard any business man or mechanic, speak a word in favor of any restriction beyond what is here named. This I can say after thirty years of active experience in the general shipping and commission business in the city of New-York ; associating a good deal with *borrowers*, and conferring with them fully and freely, relative to movements in financial matters. A relaxation of the Usury Laws would most assuredly *lower* the rate of interest, for it would draw out a great deal of capital, from this and from foreign countries, that is now locked up.

Restrictive usury laws always increase the difficulties in a money pressure. When the market rate of interest rises above the maximum fixed by law, lenders and borrowers are, as is said by a distinguished writer, "obliged to resort to circuitous devices to evade the law, and as those devices are always attended with more or less trouble and risk, the rate of interest is proportionally enhanced." What renders the matter still worse, is this, when the market rate first turns the corner of the maximum legal rate, it generally makes a sudden jump to 10 to 15 per cent. per annum, thus causing a "*money panic*" that carries distress and suffering into all classes, except the "*sharks*," who don't care two cents for the usury law.

In England, where entire freedom as to interest prevails on bills of exchange and promissory notes under twelve months to run, the rise in interest is now always gradual, and the rates are very low. The same may be said of Holland, where, as I understand, they have no restrictive usury laws.

An impression, I am told, prevails among the farmers, that to remove or essentially mitigate the present restriction, would cause money to flow towards the great cities, in quest of the "unlimited rates," thus drawing away sums of money now loaned on farms. Such fear is groundless. The moment money flows at all freely towards financial

circles, the rate will fall below what is now prevalent among farmers and manufacturers in the country.

No law of our legislative bodies limits the price of grain, still the natural law of supply and demand often gives our farmers a very "*limited price*" for their wheat, and so it will be as to the price of money, under the influence of the modification asked for.

How can we *know* that seven per cent. is the exactly right maximum? Perhaps it should be more, perhaps less. Why not guard the *lender's* welfare, and prevent his lending at *less* than seven per cent.? It is, indeed, an exceedingly doubtful and obscure sort of task to draw the exact line between what is *moral* and *immoral*, with respect to the hire of money.

The great antiquity of the usury laws is cited as a reason for continuing them, as if a proposition were true merely because it is *old*. In this way we cast aside common sense and sound philosophy, about as much as people did when a belief in witchcraft prevailed.

Mr. Whipple has a good deal to say about "the Government," allowing or doing this or that about our money affairs. We all ought to feel, and most of us do feel the strongest attachment to living by a Government of Laws, and we wish to abide and stand by them; at the same time, it is not easy to see the need of having "the Government" so constantly looking into the minutia of our private affairs. Certain persons in a community or body politic, are by their fellow-citizens, invested with power to carry into execution such measures as may conduce to the common welfare; no authority is thereby given to abridge the natural moral rights of any individual.

Ours is a popular Government, erected by the People. Those who administer it are amenable to the people. The Government must be amended and modified just as the people choose it should be.

A Government thus constituted, should be extremely careful not to legislate too much. To turn some little complex screw in the *law*, so as to regulate and adjust every move of a human being, good or bad, might perhaps increase the business and the profits of the lawyers, but the good sense of the people at large, could not tolerate such a state of things. If we *legislate* to meet every possible evil that may result from ill judged bargains, we shall have our hands *more* than full. Arbitrary and inexpedient laws invite offence and almost make a virtue of disobedience.

The more rigid the law, the higher has *always* been the rate of interest. So says *every* writer upon political economy for a century or more. Many a poor fellow has been driven into the hands of the "*sharks*," because the law-loving and the cautious were not willing to encounter the "perils of the law."

Our present Usury Law was about two years ago presented by the grand jury, as a public grievance. The law as it now stands, is a daily annoyance to business men, especially so to borrowers. It often so happens that our young and enterprising houses or commission firms, unexpectedly have too many goods pressing in upon them at one time under such circumstances in the market, as render a sale just then impracticable. In such a time, it might be a very useful arrangement to apply to some of their neighbors or brother merchants, not just then pressed with goods, for an advance in notes and money, allowing for it a moderate commission, and thus gain time for a more careful or advantageous sale. The present Usury Law prevents such arrangement, unless the goods are actually consigned for sale to the house making the advance. This tempts parties into a pretended *show* of consigning, thus engendering a habit of carrying on business in a secret and deceptive sort of a way, instead of which, all such transactions being entirely *right* as can be, ought to

be as open as daylight. I *must*, forsooth, make up some false documents, and write some *lies* into my books, before a neighbor can venture upon taking half per cent. for relieving me from a distressing embarrassment.

Our usury law *aims* at checking the borrowing, at any thing beyond seven per cent. per annum, but we are permitted to sacrifice property to raise money, on as ruinous terms as we have a mind to. Our State government now charges 12 per cent. per annum for any delay in the payment of taxes, and a recent law of our legislature prevents incorporated companies from pleading usury.

The *people*, that is to say, the constituency of the government, now want the same privilege that their own servants in the government have. It must be borne in mind that the people are the fountain of sovereignty.

Among the declared objects of the usury laws, was the protection of the poor, the ignorant or simple, the prodigal, and the projector, or speculator. All the above named class can, if they choose, injure themselves by paying too much for thousands of commodities, other than money.

It would be an endless task to regulate the price of merchandise. No legislature has ever been unwise enough to attempt any thing so preposterous.

Still, the community at large are much more exposed to imposition in the purchase of *goods*, than in the borrowing of money. The world at large recognize the same principle, whether bargaining in goods or in money. Some drive a bargain hard, whilst others are more lenient and yielding. Whatever of *wrong* there may be in this state of things, will no doubt be corrected when the Millennium commences, and *not one minute before*.

The fact that the Government makes gold and silver coin a lawful tender in the payment of debts is sometimes given as one of the reasons of its being right to fix, by law, the maximum rate of interest.

On this point, however, it must be remembered that the *State* Governments do *not* regulate the coinage farther than to sanction and carry out the action of the General Government in relation thereto.

The Constitution of the United States expressly prohibits the states from coining money, or from making any thing but gold and silver coin a tender in the payment of debts. The Constitution also prohibits the states from passing any law impairing the obligation of contracts.

If there is any thing in all this having a bearing upon the regulation of the rate of interest, it is *adverse* to *State* restriction, and in favor of United States Congressional restriction.

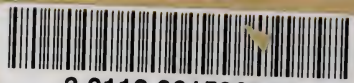
Indeed it certainly would be better for *Congress* to fix a rate of interest, which (in the absence of a contract or stipulated rate,) should govern with uniformity, all over the United States, and thus prevent disputes in the adjustment of tunning accounts between parties residing in different states.

But Congress should omit all restriction where parties mutually *agree* to a higher or lower rate. They have no right to enforce, or attempt to enforce, any such restriction, for, according to decisions of the Supreme Court of the United States, Congress does not possess the authority to regulate commerce or trade between man and man in different parts of the same state. Congress does, however, possess the general power to regulate commerce, embracing power to prescribe the rule by which commerce is to be governed.

In conclusion, I must express the hope that our Legislature may, at an early period of the next session, go into an examination of this Usury question, and if they do make such examination, I have every confidence that some most useful change will be made.

A NEW-YORK MERCHANT.

*New-York, June, 1850.*



3 0112 061590797